

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

**LEE GOSTON  
ADC #105879**

**PLAINTIFF**

**v.**

**CASE NO.: 5:07CV00068 SWW/BD**

**YOLONDA CLARK, et. al.**

**DEFENDANTS**

**RECOMMENDED DISPOSITION**

**I. Procedures for Filing Objections**

The following recommended disposition has been sent to United States District Judge Susan Webber Wright. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from receipt of the recommendations. A copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the evidence desired to be introduced at the requested hearing was not offered to the Magistrate Judge for consideration.
2. The detail of any testimony desired to be introduced at a hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and/or request for a hearing to:

Clerk, United States District Court  
Eastern District of Arkansas  
600 West Capitol Avenue, Suite 402  
Little Rock, AR 72201-3325

## **II. Background**

Plaintiff, an inmate confined to Varner Super Max, brings a pro se Complaint (#2) under 42 U.S.C. § 1983, filed on March 30, 2007. His Application for Leave to Proceed *In Forma Pauperis* (#1) was denied by Order of April 3, 2007 (#3) because he has filed three prior cases in this Court that were dismissed for failure to state a claim and which, therefore, count as “strikes” under 28 U. S. C. § 1915(g).

Title 28 U.S.C. § 1915(g) provides that a prisoner may not proceed *in forma pauperis* in a civil action if:

the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on

the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Plaintiff's dismissed cases are: 4:04CV01107 GH, 4:05CV00177 WRW, and 5:06CV00171 JMM. Plaintiff does not claim he is under imminent danger of serious physical injury.

The Order of April 3, 2007 (#3) directed Plaintiff to submit the statutory \$350.00 filing fee pursuant to 28 U. S. C. § 1915(b)(1) within 30 days, and that failure to do so would result in dismissal of the case. The Plaintiff has failed to comply with the Court's Order.

### **III. Conclusion**

Because the Plaintiff has failed to pay the required filing fee, it is recommended that his Complaint (#2) be dismissed without prejudice.

DATED this 8th day of May, 2007.



---

UNITED STATES MAGISTRATE JUDGE